

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject County Counsel Review and Approval as to Form and Legality of Documents Submitted to the Board of Supervisors or County Officers for Approval

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Purpose

Various legal documents are submitted to the Board of Supervisors or to County officers for approval on behalf of the County of San Diego. Many of these legal documents impose binding obligations upon the County with significant liability and financial consequences. Therefore, it is critical that County Counsel review such legal documents prior to their approval. It is the purpose of this Policy to identify the types of legal documents which require County Counsel review and approval as to form and legality prior to their submittal to the Board of Supervisors or to County officers, as applicable, for approval.

Background

The Board of Supervisors serves as the primary legal authority to approve legal documents on behalf of the County. Consequently, most resolutions, ordinances, deeds, contracts, and other legal documents must be submitted to the Board for adoption, approval, acceptance or execution on behalf of the County. It has been the practice for many years to submit to County Counsel, for review and approval as to form and legality, most legal documents which require Board of Supervisors' approval prior to their submittal to the Board for its action. In addition to the Board's authority to approve legal documents, several County officers are authorized by state law, County Charter, County ordinances or Board action to approve, adopt or accept various legal documents on behalf of the County. Legal documents which may be adopted, approved, accepted or executed by County officers should be submitted to County Counsel for review and approval prior to action by the County officer. Therefore, it is desirable that County Counsel review and approve as to form and legality most legal documents prior to submission either to (i) the Board of Supervisors, or (ii) authorized County officers.

Policy

The Board of Supervisors hereby adopts the following policy:

A. Documents Submitted to the Board of Supervisors For Approval.

1. Documents requiring County Counsel review and approval as to form and legality prior to submission to the Board of Supervisors for appropriate action. Except as provided in Sections "A.2." and "C.1.", all ordinances, resolutions, contracts, agreements, deeds, easements, leases, liens and other legal documents (hereinafter collectively referred to as "documents") to be adopted, accepted, approved or executed by the Board of Supervisors shall require County Counsel review and

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approval as to form and legality prior to submission of such documents to the Board of Supervisors for appropriate action.

2. Documents not requiring County Counsel review and approval as to form and legality prior to submission to the Board of Supervisors for appropriate action. The following types of documents do not require County Counsel review and approval as to form and legality prior to submission to the Board of Supervisors for appropriate action:
 - a. Resolutions of commendation.
 - b. Resolutions designating official days or weeks or months.
 - c. Resolutions opposing or supporting legislation.

B. Documents Submitted to County Officers (Elected or Appointed) For Approval.

1. County Counsel review and approval of documents as to form and legality prior to submission to authorized County officers for appropriate action. Where a County officer is duly authorized to approve, adopt, accept or execute certain documents on behalf of the County, the following procedure shall be followed with respect to County Counsel review and approval as to form and legality of such documents prior to approval or execution by the County officer:
 - a. The Office of County Counsel shall formulate and issue to all County departments document review guidelines ("Document Review Guidelines"), specifying the types of documents which must be approved as to form and legality by County Counsel prior to approval or execution by a County officer. The specific requirements of the Document Review Guidelines shall be developed by the Office of the County Counsel and except as provided in Section "C.1.", shall include a requirement that County Counsel review and approve as to form and legality those documents which:
 1. obligate the County to pay more than a designated dollar amount specified in the Document Review Guidelines (as established by County Counsel in consultation with the County Auditor and Controller and Risk Manager);
 2. govern transactions which present large or unique risks or potential liability to the County.
 3. contain specified provisions which present significant risks or potential liability to the County.

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- b. The Document Review Guidelines shall be kept by the Office of the Clerk of the Board of Supervisors and made available on the Clerk of the Board's Intranet Website, and may be amended from time to time by the County Counsel, after consultation with the Auditor and Controller and Risk Manager. All County departments and officers having authority to execute or approve documents which may be subject to the procedure required by the Document Review Guidelines shall regularly review the Document Review Guidelines, the current effective version of which will be posted on the Clerk of the Board's intranet website.
2. Notwithstanding the foregoing, the Board of Supervisors or County Counsel may waive any requirement that a document be approved as to form and legality by County Counsel prior to approval or execution by a County officer.

C. County Counsel Standard Forms.

1. To facilitate the document review process described herein, County Counsel may develop and issue "County Counsel Standard Forms" for those documents which must be reviewed by County Counsel prior to submission to the appropriate executing authority. A document designated as a "County Counsel Standard Form" shall mean a document which except for names of parties, quantities, amounts, and property descriptions, has been approved and issued by County Counsel. Such form shall be designated "CCSF" and shall bear a number assigned by County Counsel and the date of approval or revision, e.g., "CCSF 20.1 (11/73)," or "CCSF 20.1 (Rev. 8/94)." A legal document completed on an unaltered County Counsel Standard Form need not be submitted to County Counsel for approval as to form and legality prior to either (i) submission to the Board of Supervisors, or (ii) execution by a duly-authorized County officer.
2. Procedure for use of County Counsel Standard Forms:
 - a. One copy of each County Counsel Standard Form will be furnished to the appropriate departments.
 - b. County Counsel shall file, in hard copy, electronic copy, or both, with the Clerk of the Board of Supervisors, or with the appropriate executing department, as applicable, copies of all County Counsel Standard Forms ("CCSF") and any revisions thereof issued by County Counsel, and shall notify the Clerk of the Board of Supervisors, or the appropriate department, as applicable, of the withdrawal of any County Counsel Standard Form. The Clerk of the Board of Supervisors shall maintain a file of current County Counsel Standard Forms in hard copy form, electronic

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form, or both. County Counsel shall keep the Clerk and the originating departments informed of any revisions to such forms.

- c. Where an office, department or agency reproduces a CCSF, it shall be responsible for the accurate reproduction thereof and shall include on all reproduced copies reference to the CCSF, its number and date of approval or revision, e.g., "CCSF 20.1 (11/73)," or "CCSF 20,1 (Rev. 8/94)."
- d. Where a form purporting to be a County Counsel Standard Form is filed with the Board of Supervisors, the Clerk of the Board of Supervisors shall check to determine that the Form bears the designation of the current CCSF issued by County Counsel. If it is not the current form, the Clerk of the Board of Supervisors shall so notify the submitting agency or department.

D. Questionable documents to be submitted to County Counsel.

Notwithstanding any other provisions of this policy to the contrary, where the submitting agency or department head, or County Counsel, questions the propriety of the form of a document, or its legality, or the authority of the County to approve, accept or execute the document, or where the document exposes the County to significant liability, County Counsel's approval as to form and legality shall be obtained prior to either (i) submission of the document to the Board of Supervisors, or (ii) approval or execution of the document by an authorized County officer, whichever is applicable.

Sunset Date

This policy will be reviewed for continuance by 12-31-12.

Board Action

03-5-74 (87)
06-21-77 (48)
09-20-83 (10)
07-26-88 (43)
12-12-89 (49)
06-5-90 (43)
12-18-90 (50)
02-26-91 (24)
04-30-91 (32)

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07-30-91 (35)

11-29-94 (40)

5-14-96 (32)

5-16-06 (16)

CAO Reference

County Counsel